

TITLE 24. STREETS AND SIDEWALKS

Chapter 24.01. In General.

24.01.010. Superintendent of Streets and Sidewalks.

Under the Direction of the Director of Public Works, it will be the duty of the superintendent of streets and sidewalks to see that the provisions of this chapter are faithfully carried out and who shall perform such other and further duties as may be prescribed by the mayor and Council from time to time.

24.01.020. Trees and Shrubs.

Short Title. This section shall be known and may be cited as "The Shade Tree Ordinance of Brigham City."

Definitions. For the purpose of this section, the following terms, phrases, words and their derivations shall have the meanings given herein. When not consistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

City. The City of Brigham.

City Forester. The superintendent of parks of the City.

Person. Any person, firm, partnership, association, corporation, company or organization of any kind.

Shade Tree or Tree. A tree in any public place, except where otherwise indicated.

Tree Planting Strip. The area between curb or place where curb should be and the property line; or an area inside the property line where an easement is given for the purpose of permitting the planting of shade trees; also designated herein as "parking."

Shade Tree Commission. There is hereby established a City Shade Tree Commission, which shall consist of six members (which shall include the City Forester) who shall be appointed by the City Council as follows:

A. The City Forester shall be a nonvoting consultant to the shade tree commission.

B. Three voting members shall be appointed for a period of four years. Such appointment is to run concurrent with the term of the mayor. The initial appointment for two voting members shall be a period of two years and then all subsequent appointments for such two members shall be for a period of four years.

C. Upon the appointment of the shade tree commission under this section, the City Council shall designate the temporary chairman who shall call and preside at the first meeting and until the shade tree commission elects its chairman and vice-chairman, who, when elected, shall serve in such capacity until thereafter the shade tree commission shall annually elect its chairman and vice-chairman. The City Council shall provide a secretary and space for meetings for the shade tree commission.

D. The shade tree commission shall, upon appointment, prepare for the approval of the City Council rules of policy or bylaws, which shall be consistent with this section, and which shall govern the activities of the shade tree commission.

E. The shade tree commission shall meet at such times and places as may be necessary to discharge its duties and responsibilities, but not less than once each month.

F. The duties of the shade tree commission are advisory to the City Council and shall extend to all policies and phases of tree culture related to trees and shrubs now planted and growing or hereafter to be planted and grown upon any and all of the public streets and public places of the City.

G. The shade tree commission shall, on behalf of and with the consent of the City Council, have the authority to receive gifts or bequests from any person or from any source for the building, improvement or maintenance of a civic arboretum, or for tree planting or maintenance on any street or other public property. Such gifts or bequests shall be received by the City Treasurer and converted into a special fund for the purposes above set out.

24.01.030. City Forester. Duties and Responsibilities. Permit Required.

There is hereby established the office of a City Forester, who shall be the superintendent of parks.

The City Forester shall supervise the execution and enforcement of the provisions of this section and all other plans, standards and specifications for the regulation of matters pertaining to shade trees that may be officially adopted by the City corporation.

It shall be unlawful to plant, move, remove, spray, trim or prune out, above or below ground, disturb or alter any tree or shrub on the City parking strips, parks or any public property, or to cause such acts to be done by others, without first obtaining a written permit from the City Forester, who shall cause such permits

to be issued if, in his judgment, the work is necessary, and if such work falls within the authority granted within this section. A permit shall not be required to cultivate and irrigate. As a condition to any permit to remove any public tree or shrub within public property, the shade tree commission may require that the permittee plant and maintain one or more trees or shrubs in place of the one removed. Whenever any such tree or shrub has been removed or destroyed pursuant to any such conditional permit, it shall be a misdemeanor for the permittee to fail, refuse or neglect to plant and maintain another tree or shrubs or other trees or shrubs of the type, size and at the location specified in the permit, within the time specified by the shade tree commission from the date of the issuance of the permit. An additional condition of the placement of any permit is the acceptance of the permittee of responsibility for the repair or replacement of any damage to sprinkling systems or adjacent property caused while pursuing the work under the permit. Any request submitted for approval to permit the removal of a tree for the purpose of installing new driveway access or similar change in the curb and gutter or sidewalk shall be accompanied by a sketch of the proposed change. The sketch shall be made to scale showing all proposed changes, and shall include the entire frontage of the lot involved and such frontage of adjacent lots as may be required by the shade tree commission. The sketch shall be prepared accurately by a person who, in the opinion of the shade tree commission, is qualified to prepare such a sketch.

24.01.040. Trees Located Within Public Property.

The City shall assume responsibility for relieving the following conditions caused by trees or shrubs on City tree planting strips, public parks or property:

- A. Removal of dead trees or limbs, or trees or limbs that, as determined by the City Forester, appear to be a hazard or liable to fall.
- B. Removal of trees or limbs from trees or shrubs that have actually fallen across a street, sidewalks or upon City property.
- C. Removal of diseased or dying trees that are beyond reclamation.
- D. Removal of trees or roots directly in the way of street widening projects, new curb and gutters, or sidewalk and curb repairs.
- E. All pruning of trees and shrubs.

24.01.050. Interference With City Employees and Willful Injury to Trees. Penalty.

A. No person shall prevent, delay or interfere with the City Forester or his assistants in the execution or enforcement of this section; provided, however, that nothing herein shall be construed as an attempt to prevent a public hearing on the permit or any remedy legal or equitable in any court of competent jurisdiction for the protection of property rights by the owner of any property within the City.

B. No person shall willfully injure or destroy any tree on the City tree planting strips, public parks or other public property of the City by any means, including, but not limited to, the following:

- 1. Constructing a concrete, asphalt, brick or gravel sidewalk or otherwise filling up the ground area around any tree so as to shut off air, light or water from the roots, except under written authority from the City Council.
- 2. Piling building material, equipment or other substance around any tree so as to cause injury.
- 3. Pouring any injurious matter on or around any tree, or on the ground around it or on any lawn or sidewalk.
- 4. Injuring any tree, tree-stake or guard with any vehicle or animal, or in any other manner causing injury to any tree or lawn on public property.

C. Tree-stakes or guards may be placed around trees by property owners; provided, the same are placed near a tree for the purpose of protecting or training such trees.

D. The City Forester shall determine when any tree roots or limbs originating on private property are interfering with the City sidewalks or property and serve notice by mailing to the owners or party occupying such premises to either remove such tree or trim the roots of any tree in order to protect the City sidewalks from damage.

Penalty. A violation of any provision of this section shall be punished by fine in any sum not to exceed two hundred ninety-nine dollars or by imprisonment for a period of no longer than six months or by both such fine and imprisonment.

24.01.060. Adoption of Public Works Standards and Technical Specifications.¹

There is hereby adopted by the City Council that certain manual entitled "Brigham City Public Works Standards and Technical Specifications, Third Edition (December 2003)," containing certain minimum standards for the construction of streets, culinary water lines, storm sewers, sanitary sewers, street intersections, street designs, details for construction of curb and gutter, sidewalks, driveways from public streets, details for private connections to public sewer and water systems and related matters, not less than three copies of which have been and are now filed in the office of the City Recorder. Any amendments, modifications, supplements or later editions of said manual shall constitute the manual then in effect under this ordinance. Provided, however, that before any later editions shall take effect, the City Council by resolution shall certify that the later editions are available and three copies of all amendments, modifications, supplements or later editions shall be filed for examination and use by the public in the office of the City Recorder of Brigham City.

Whenever, in the opinion of the Brigham City Public Works Director, the City Engineer or the Superintendent having jurisdiction, a literal enforcement of these standards may work an undue hardship or a literal enforcement may be unnecessary to meet the goals and standards of Brigham City, Brigham City may modify these standards and specifications. Modifications may be granted when there are practical difficulties involving carrying out the provisions of the manual and a panel consisting of the City Engineer, Director of Public Works, and Superintendent having jurisdiction over that section, determine that a granting of a modification for an individual case will meet the goals and requirements of Brigham City without unduly jeopardizing the public and the individual's interest. The Superintendent having jurisdiction shall first receive an application for modification to the standards of an interested party. Upon receipt of the application the panel shall find that a special individual reason makes the strict letter of the standard and practical, and shall find the modification is in conformance with the intent and purpose of the standards and shall find that such modification does not in any way lessen the integrity of the standards. When such findings of fact are made, the panel may grant such modification as it deems appropriate. The details of an action granted as modification by this panel shall be recorded and entered in the files of the Public Works Office, with these specific reasons for the granting of said modification.

24.01.070. Liability for Repair of Sidewalk.

Whenever a sidewalk is out of repair by reason of the act or omission of any person, the same shall be repaired at his expense under the direction of the superintendent of streets and sidewalks.

24.01.080. Defects to Be Reported and Repaired.

All defects in public streets coming to the knowledge of any officer or person in the employ of the City shall be by him at once communicated to the superintendent of streets and sidewalks and he or some competent person detailed by him shall, without delay, repair or cause such defect to be immediately repaired. Until such repair is completed, he shall do whatever shall be necessary to protect the public from injury by reason of the defect.

24.01.090. Building Material in Street.

It shall be unlawful for any person to occupy or use any portion of the public street for the erection or repair of any building upon and abutting thereon, without first making application to and receiving from the Council a permit for the occupation or use, for building purposes, of such portions of streets and for such periods of time and under such limitations and restrictions as may be required by the Council; provided that no permit shall be granted to occupy more than fifteen feet of any street, measured from the curb line, and any such permit may be revoked by the Council at any time when the holder thereof fails to comply with any rule or regulation under which it is granted or when in the opinion of the Council, the public good requires such revocation.

24.01.100. Obstructions Generally.

It shall be unlawful for any person to put or place or cause to be put or placed anywhere upon a public street or sidewalk, and it shall be unlawful for any such person, after reasonable notice by the chief of police or any police official, to suffer to be or remain in front of his premises, upon the sidewalk, on the half of the street next to such premises:

¹ Ordinance No. 03-48, dated 12/18/03.

First: Any broken ware, glass, filth, rubbish or refuse matter, on the half of the street next to such premises;

Second: Any wagons, old automobiles, lumber, wood, boxes, fencing, building material, merchandise or other things which shall obstruct such public streets or sidewalks, or any part thereof, or the free use and enjoyment thereof, or the free passage over and upon the same, or any part thereof, without the permission of the Council;

Third: Any goods, wares, or merchandise, for sale or show or otherwise, beyond three feet of the front line of the lot where such goods, wares or merchandise may be exposed.

No person receiving or delivering goods, wares or merchandise in the City shall place or keep upon, or sue for to be placed or kept upon, any sidewalk in the City any goods, wares or merchandise which he may be receiving or delivering, for a longer period than two hours.

24.01.110. Sales Attracting Crowds on A Sidewalk.

It shall be unlawful for any merchant, auctioneer or other individual to sell or exhibit for sale any kind of property on or near to any street so as to cause people to gather in crowds on the sidewalk or to obstruct free passage thereon.

24.01.120. Playing on Sidewalk Or in Street.

It shall be unlawful for any person to obstruct any sidewalk or street by games of any kind, playing ball, marbles, jumping, rolling hoops, flying kites or roller skating, so as to annoy or obstruct the free travel of any pedestrian or vehicle.

24.01.130. Driving Or Riding on Sidewalk.

It shall be unlawful for any person to drive or operate any vehicle or lead, ride or drive any animal upon any sidewalk in the City. It shall be unlawful to operate or ride a bicycle upon the sidewalks adjoining Main Street between 200 South and 100 North. It shall be unlawful to operate or ride a bicycle, skateboard, roller skates and/or in-line skates on the sidewalks adjoining Main Street between 200 South and 100 North as well as the plaza area and sidewalks adjacent to the Brigham City corporate offices between Main Street and 100 East. A violation of this section shall be punishable by a fine not to exceed \$750.00.

24.01.140. Coasting on Street.

It shall be unlawful for any person to coast or slide with any sled, sleigh, toboggan or vehicle upon any public street, avenue, sidewalk or alley within the City; provided that the Council, by public notice or proclamation, may authorize the use of certain streets for coasting during the winter season. During the period for which such notice or proclamation shall be issued, coasting and sliding upon such streets as may be designated by the proclamation or notice shall be permissible.

24.01.150. Gates to Swing Inward.

It shall be unlawful for any person to allow or cause any gate to open outward and upon the sidewalk.

24.01.160. Billboards.

It shall be unlawful for any person to erect and maintain any billboard for advertising purposes on, in or along any street in the City without first obtaining a permit therefor from the Council.

24.01.170. Irrigation Water.

All owners or occupants of lots in the City requiring water from a main ditch for irrigation or other purposes are hereby required to dig suitable ditches, erect flumes or lay pipes and maintain the same to convey the water across the sidewalk to or from their respective lots.

It shall be unlawful for any person to allow or cause any irrigation water to overflow or be directed upon the street or the public right of way where it causes any damage.

24.01.180. Leaving Railroad Cars in Streets.

It shall be unlawful for any person to cause to be left standing or allow any boxcar or other railroad vehicle to remain on switches or other tracks, other than main lines, laid in the streets of the City; provided that boxcars may be left so standing while a switch engine or other power unit is in the immediate vicinity and in the process of switching other cars at such location.

24.01.190. Public Parade Regulations.²

The following shall apply to public property adjoining parade routes and staging areas for parades and it shall be unlawful for any person to violate these provisions:

~~A. Before 6:00 p.m. of the Thursday of Peach Days no person shall actually claim or attempt to claim, reserve, occupy or otherwise control public property either in person or by the placement of any object, such as, but not limited to ropes, chairs, blankets, banners, or vehicles, or barriers of any kind.~~

~~B. From and after 6:00 p.m. of the Thursday before the Peach Days parade, a person may physically occupy a position on public property and may use a blanket, sleeping bag, or chair to reserve the position. No person may claim or attempt to reserve any public property for themselves or others by placement of tents, barricades or other barriers. Brigham City does not ensure that such personal property will not be moved, damaged or stolen; all such risks shall be assumed by the individual.³~~

~~C.A~~ No person shall place, erect, use or employ any tent or other enclosed shelters, including vehicles and trailers, on public property along a parade route or staging areas at any time.

~~D.B~~ No person shall obstruct public sidewalks, paved portions of streets, or occupy any unsafe position or occupy a position which may cause damage to public or private property.

~~E.C~~ From and after 8:00 p.m. of the day before a parade and continuing until the conclusion of the parade, no person shall park a motor vehicle, trailer or tent trailer on the streets designated as the parade route. Only motor vehicles and trailers which are parade entries or parts thereof are allowed to be in the areas designated as staging areas. Any vehicle, motor vehicle, trailer or tent trailer parked in violation of this section is a public nuisance and may be towed from the prohibited area at the owner's expense.

~~F.D~~ The Mayor may authorize the City to reserve places for the observation of the parade and to erect and control seating on reserved public property.

24.01.200. Removal of Snow From Sidewalk.

A. It shall be unlawful for any person or entity owning, having charge or control of or occupying any real estate abutting on any street within the City to fail, refuse or neglect to remove all weeds and noxious vegetation from the curb line to the inside line of public sidewalks and further, to keep the sidewalk in front of such property free from litter, snow, ice and obstructions.

B. The violation of the foregoing shall constitute a Class B Misdemeanor. Additionally, should the City choose to remove the weeds, vegetation, letter, snow, ice or obstructions, the real property owner shall be indebted to the City for the reasonable cost of such removal. In the event legal action is commenced to obtain reimbursement for said costs, the abutting property owner shall also pay all legal expenses incurred by the City in obtaining judgement for such costs.

24.01.210. Parking Vehicles on Streets After Snowstorm.

A. No person shall park or allow to be parked a motor vehicle, trailer, camper, or any other obstruction on any street in Brigham City between the hours of 2:00 a.m. and 6:00 a.m. during a period of forty-eight (48) hours immediately following any snowfall on the streets of Brigham City. In the event of sequential snowstorm activity, the time period will commence at the first snowfall and end forty-eight (48) hours after the conclusion of the latter storm. Any motor vehicle, camper, trailer or other object parked in violation of this requirement shall be presumed to be so parked by the owner unless the registered owner by competent evidence shows that the vehicle was so parked by some other individual and without the owner's permission or knowledge.

B. Police officers are authorized to issue citations to individuals violating the foregoing paragraph. In the event of an apparent repeat offender or if the vehicle or object creates a serious maintenance or safety problem, then the vehicle, trailer, camper or other object may be impounded. The owner shall be responsible for all costs of towing, storage and any other incidental expenses incurred as a result of said impoundment.

C. A violation of this section shall be considered an infraction punishable by a fine up to \$500.00.

D. It shall be a defense to any prosecution hereunder if the defendant can show that the vehicle for which the citation was issued was parked in front of the individual's residence and that the individual is a tenant, rather than an owner of the residence, and that the rental property has no off-street parking for the tenant and constitutes a nonconforming use which existed prior to the enactment of the City zoning ordinances.

² Ordinance No. 04-21, dated 8/5/04.

³ Ordinance No. 06-11, dated 8/31/06.

24.01.220. Dropping, Sifting Or Leaking Loads.

It shall be unlawful for any person to drive a vehicle or move the same upon any street within the City unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom. There shall at all times be a minimum of three inches between the top of the contents and the top of the sideboards and end gate of the vehicle.

Chapter 24.02. Encroachments.

24.02.010. Notice to Remove. By Whom Given.

If any street is encroached upon by a fence or building or otherwise, the superintendent of streets and sidewalks shall, in writing, require the encroachments to be removed.

24.02.020. Same. To Whom Given. Posting. Contents.

Notice must be given to the occupant or owner of the land or person causing or owning the encroachments or be left at his place of residence, if he resides in the City; if not, it must be posted on the encroachment, specifying the breadth of the street, the place and extent of the encroachment and requiring the removal thereof within ten days thereafter.

24.02.030. Failure to Remove After Notice. Removal by Superintendent of Streets and Sidewalks.

It shall be unlawful to leave, or cause to be left, any encroachment upon the streets of the City after the expiration of ten days from the service or posting of a notice to remove such encroachment. If the encroachment is such as to effectually obstruct and prevent the use of the highway for vehicles, the superintendent of streets and sidewalks shall forthwith remove the same.

If the encroachment is not denied but is not removed for five days after the notice is complete, the superintendent of streets and sidewalks shall cause such encroachment to be removed at the expense of the owner, occupant or person controlling the same and recover his costs and expenses in an action for that purpose.

24.02.040. Action to Abate.

If the encroachment is denied and the owner, occupant or person controlling the matter or thing charged with being an encroachment refuses either to remove or permit the removal thereof, the Council shall direct the City attorney to commence in the proper court an action to abate same as a nuisance.

Chapter 24.03. Excavations.⁴

24.03.010. Definitions.

Application. Any person who makes application for a permit.

Appurtenances. Miscellaneous concrete surfaces within the public way, such as parking bays and carriage walks.

Business. Any place in the City in which there is conducted or carried on principally or exclusively any pursuit or occupation for the purpose of gaining a livelihood.

City. Brigham City, a municipal corporation of the State of Utah.

City Engineer. The City engineer, or his/her authorized representative.

Emergency. Any unforeseen circumstances or occurrence, the existence of which constitutes a clear and immediate danger to persons or property, or which causes interruption of utility services.

Engineering Regulations, Specifications, and Design Standards. The latest version of the Brigham City Public Works Standards and Technical Specifications.

Failure. A work site restoration which fails to meet Public Works Standards and Technical Specifications, or which results in a deteriorated or substandard condition within the duration of the warranty period. Failure may be settlement of surfaces, deterioration of materials, or other surface irregularities. Measurement of failure shall be further defined in the Engineering Regulations.

Infrastructure Provider. A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the right-of-way.

⁴ Section 24.03 completely amended by Ordinance No. 98-38, 8/20/98.

Operator. Any person who provides service over a Telecommunications System and directly or through one or more affiliates owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

Permittee. Any person that has been issued a permit and thereby has agreed to fulfill the requirements of this chapter.

Person. Includes any natural person, partnership, firm, association, provider, corporation, company, organization, or entity of any kind.

Property Owner. Person or persons who have legal title to property and/or equitable interest in the property, or the ranking official or agent of a company having legal title to property and/or equitable interest in the property.

Provider. An operator, infrastructure provider, reseller, system lessee, or public utility company.

Public Utility Company. Any company subject to the jurisdiction of the Utah State Public Service Commission, or any mutual corporation providing gas, electricity, water, telephone, or other utility product or services for use by the general public.

Public Way. Includes all public rights-of-way and easements, public footpaths, walkways and sidewalks, public streets, public roads, public highways, public alleys, and public drainage ways. It does not, however, include utility easements not within public ways of the City, except where activities proposed by an infrastructure provider, operator, person, or public utility company involves attachment to a pole owned by Brigham City.

Private Drain Line. A pipe installed solely for the transmission of water collected or generated on private property such as drainage, spring, or storm water, or condensate into the public drainage system.

Reseller. Refers to any person that provides service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission and does not install any system in the rights-of-way.

Resident. The person or persons currently making their home at a particular dwelling.

Storm drains. A dedicated pipe, conduit, water way, or ditch installed in a right-of-way or easement for the transmission of storm and drainage water. This term does not include private drain lines.

System lessee. Any person that leases a system or a specific portion of a system to provide services.

Telecommunications System or System. All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider located in the construction, ownership, operation, use or maintenance of a telecommunications system.

Work Site Restoration. Includes the restoring of the original ground or paved hard surface area to comply with engineering regulations, and includes but is not limited to, repair, cleanup, backfilling, compaction, and stabilization, paving and other work necessary to place the site in acceptable condition following the conclusion of the work, or the expiration or revocation of the permit.

24.03.020. Permit Required; Basis for Issuance.

Any person desiring to perform work of any kind, including but not limited to excavation and pole attachment, in a public way within the City, shall make application for a permit. The decision by the City to issue a permit shall include, among other factors determined by the City, the following:

A. The capacity of the public way to accommodate the facilities or structures proposed to be installed in the public way;

B. The capacity of the public way to accommodate multiple wire in addition to cables, conduits, pipes or other facilities or structures of other users of the public way, such as electrical power, telephone, gas, sewer, and water;

C. The damage or disruption, if any of public or private facilities, improvements, or landscaping previously existing the public way;

D. The public interest in minimizing the cost and disruption of construction from numerous excavations of the public way;

E. Compliance with Brigham City Public Works Standards and Technical Specifications.

24.03.030. Permit Application Requirements.

A. Application for a permit shall be filed with the Public Works Department on a form or forms to be furnished by the City. Applicants shall follow the requirements of Section 2 of the Brigham City Public Works Standard and Technical Specifications.

B. The Public Works Department may deny the issuance of permits to contractors, utility companies, or other permit applicants who have shown by past performance that in the opinion of the Public Works

Department they will not consistently conform to the Engineering Regulations, Specifications, Design Standards, or the requirements of this chapter.

C. When necessary, in the judgment of the Public Works Department, to fully determine the relationship of the work proposed to existing or proposed facilities within the public ways, or to determine whether the work proposed complies with the engineering regulations, construction specifications and design standards, the Public Works Department may require the filing of engineering plans, specifications and sketches showing the proposed work in sufficient detail to permit determination of such relationship or compliance, or both, and the application shall be deemed suspended until such plans and sketches are filed and approved.

D. It shall be unlawful for any person to commence work upon any public way until the Public Works Department has approved the application and until a permit has been issued for such work, except as specifically approved to the contrary in this chapter or the Brigham City Public Works Standard and Technical Specifications.

E. The disapproval or denial of an application by the Public Works Department may be appealed by the applicant to the City Council by filing of a written notice of appeal within ten days of the action of the Public Works Department. The City Council shall hear such appeal, if written request therefore be timely filed as soon as practical, and render its decision within two weeks following notice of such appeal.

F. In approving or disapproving work within any public way, or permits therefore, in the inspection of such work; in reviewing plans, sketches or specifications; and generally in the exercise of the authority conferred upon him/her by this chapter, the Public Works Department shall act in such manner as to preserve and protect the public way and the use thereof, but shall have no authority to govern the actions or inaction of permittees and applicants or other persons which have no relationship to the use, preservation or protection of the public way.

G. It shall be unlawful for a City, County, state, federal or other government employee to perform routine maintenance work, not involving excavations, without first having obtained a permit therefore.

24.03.040. Emergency Work.

Emergency work may proceed in compliance with Section 2.3 of the Brigham City Public Works Standards and Technical Specifications.

24.03.050. Permit Fees.

A. The City shall charge and the permittee shall pay upon issuance of the permit, a fee, which shall be established by resolution. In addition to the permit fee, the contractor shall provide a financial guarantee bond approved by Brigham City pursuant to Chapter 24.03.140 of this Title to cover the estimated cost of reviewing the project and issuing the permit, inspections of the project, deterioration of the public way or diminution of the useful life of the public way, and other costs to the City associated with the work to be done under the permit. All costs shall be assessed in a non-discriminatory manner and shall be estimated by resolution.⁵

B. The Public Works Department may waive permit fees or penalties or portion thereof provided for in this chapter, pursuant to Section 2.2.C of the Brigham City Public Works Standards and Technical Specifications.

C. Additional charges to cover the reasonable cost and expenses of any required engineering review, inspection, and work site restoration associated with each undertaking may be charged by the City to each permittee, in addition to the permit fee.

24.03.060. Permit - Contents - Duration and Extensions.

A. Each permit application shall state the starting date and estimated completion date. Work shall be completed within five days from the starting date or as determined by the Public Works Department pursuant to Section 2.2.F of the Brigham City Public Works Standards and Technical Specifications. Such determination shall be based upon factors reasonably related to the work to be performed under the permit. Such factors may include, in addition to other factors related to the work to be performed, the following:

1. The scope of work to be performed under the permit;
2. Maintaining the safe and effective flow of pedestrian and vehicular traffic on the public way affected by the work;

⁵ Ordinance No. 03-48, dated 12/18/03.

3. Protecting the existing improvements to the public way impacted by the work;
4. The season of the year during which the work is to be performed as well as the current weather and its impact on public safety and the use of the public way by the public;
5. Use of the public way for extraordinary events anticipated by the City.

The Public Works Department shall be notified by the permittee of commencement of the work no sooner than 48 hours prior to commencing work. Upon notification by the permittee, the Public Works Department shall notify the appropriate utility, department, or division of work to be commenced. The permit shall be valid for the time period specified in the permit.

B. If the work is not completed during such period, prior to the expiration of the permit, the permittee may apply to the Public Works Department for an additional permit or an extension, which may be granted by the Public Works Department for good cause shown.

C. The length of the extension requested by the permittee shall be subject to the approval of the Public Works Department. Extensions allowing work to be completed in the winter period shall be subject to provisions of Section 2.3.E of the Brigham City Public Works Standards and Technical Specifications.

24.03.070. Permit - No Transfer or Assignment.

Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit; provided, however, that the holder of the permit shall be and remain responsible for the performance of the work under the permit, and for all bonding, insurance and other requirements of this chapter and under said permit.

24.03.080. Compliance with Specifications, Standards, Traffic-Control Regulations; Site Permittee Identification.

A. The work performed in the public way shall conform to the requirements of the Brigham City Public Works Standards and Technical Specifications, engineering regulations, design standards, construction specifications and traffic control regulations of the City, copies of which shall be available from the Public Works Department, kept on file in the office of the City Recorder and be open to public inspection during office hours.

B. Where a job site is left unattended, before completion of the work, signage with minimum two inch high letters shall be attached to a barricade or otherwise posted at the site, indicating the permittee's name, or company name, telephone number, and after hours telephone number.

C. All excavations shall be conducted in a manner resulting in a minimum amount of interference or interruption of street or pedestrian traffic. Inconvenience to residents and businesses fronting on the public way shall be minimized. Suitable, adequate and sufficient barricades and/or other structures will be available and used where necessary to prevent accidents involving property or persons. Barricades must be in place until all of the permittee's equipment is removed from the site and the excavation has been backfilled and proper temporary gravel surface is in place, except where backfilling and resurfacing is to be done by the City; in which case the barricades, together with any necessary lights, flares or torches, must remain in place until the backfill work is actually commenced by the City. From sunset to sunrise, all barricades and excavations must be clearly outlined by adequate signal lights, torches, etc. The Police Department and Fire Department shall be notified at least four hours in advance of any planned excavation requiring street closure or traffic detour.

24.03.090. Other Highway Permits.

A. Holders of permits for work on highways owned or under the jurisdiction of other government entities, but located within the City limits, shall not be required to obtain permits from the City under the provisions of this chapter, unless the work extends beyond the back side of the curb, or beyond any other designated jurisdictional boundary. Any City permit shall not be construed to permit or allow work on a County road on a state highway within the City without an applicable County or state permit.

B. The Public Works Department, at its discretion, shall have the right and authority to regulate work under permits issued by other governmental entities with respect to hours and days of work, and measures required to be taken by the permittee of said governmental entity for the protection of traffic and safety of persons and property. Notwithstanding the foregoing, nothing in this chapter shall be construed to impose any duty, implied or express, on the City or its employees, officers, agents or assigns, relative to the protection of traffic and safety of persons or property, arising out of the issuance of any permit issued by government

entities other than the City, or arising out of any work performed on any public way owned or within the jurisdiction of the City.

24.03.100. Relocation of Structures in Public Ways.

A. The Public Works Department may direct any person owning or maintaining facilities or structures in the public way to alter, modify or relocate such facilities or structures as the Public Works Department may require. Sewers, pipes, drains, tunnels, conduits, pipe driveways, vaults, trash receptacles and overhead and underground gas, electric, telephone, telecommunication and communication facilities shall specifically be subject to such directives. The person owning or maintaining the facilities or structures shall, at their own cost and expense and upon reasonable written notice by the City, promptly protect, or promptly alter or relocate such facilities or structures, or part thereof, as directed by the City. In the event that such person refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such person. Such person shall pay to the City all costs incurred by the City in connection with such work performed by the City, including also design, engineering, construction, materials, insurance, court costs and attorney's fees.

B. Any directive by the Public Works Department shall be based upon the following:

1. The facility or structure was installed, erected or is being maintained contrary to law, or determined by the Public Works Department to be structurally unsound or defective;
2. The facility or structure constitutes a nuisance as defined under state statute or City Ordinance. (This section shall not, however, be deemed to diminish the vehicle impound authority of the Police Department);
3. The authority under which the facility or structure was installed has expired or has been revoked;
4. The facility or structure is not in conformity with public improvements consistent with the General Plan of the City for the area; or
5. The public way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction.
6. The grades or lines of the public way are to be altered or changed.

C. Any person owning or maintaining facilities or structures in the public way who fails to alter, modify or relocate such facilities or structures upon notice to do so by the Public Works Department shall be guilty of a Class B misdemeanor. All costs of alteration, modification or relocation shall be borne by the person owning or maintaining the facilities or structures involved.

24.03.110. Impact of Excavation on Existing Improvements.

A. If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel and convenient for users, and consistent with City standards for such.

B. Where excavations are made in paved areas, the surface shall be replaced pursuant to Section 16 of the Brigham City Public Works Standards and Technical Specifications.

C. 1. At any time a permittee disturbs the yard, residence or the real or personal property of a private property owner or the City, such permittee shall ensure that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work.

2. The costs associated with the disturbance and the return, replacement and/or restoration shall be borne by the permittee. Further, a permittee shall reimburse a property owner or the City, for any actual damage caused by the permittee, its subcontractor, or its independent contractor, in connection with the disturbance of such property. However, nothing in this subsection shall require the permittee to pay a subscriber or private property owner when that subscriber or private property owner and when the permittee exercises due care in the performance of that service, or when the subscriber or private property owner provided false information to the permittee on which the permittee relied to its detriment.

D. Examples of types of acts specifically included in this section are the following:

1. Removal of sod, lawn, shrubbery, flowers, trees, driveways, or fence, to install, trench, repair, replace, remove or locate, equipment, cable or other appurtenances of the permittee;
2. Installation or removal of equipment or other appurtenances of the permittee's system within a private property owner's property or residence which requires drilling, excavating, plastering, or the like on the part of the permittee;

3. Temporarily relocating or moving a piece of personal property or a fixture of a private property owner (such as a motor vehicle, fence, air conditioning, heating unit, or the like) in order to perform some sort of construction, maintenance or repair by the permittee; or

4. Permanently removing a permittee's equipment or other appurtenances due to the revocation, termination or non-renewal of the franchise (if applicable).

E. Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must be submitted for approval by the Public Works Department prior to the blockage of the channel.

F. The requirements imposed upon the permittee extend to any subcontractor or independent contractor that the permittee might employ to perform the tasks pursuant to the permit.

G. The requirements of this section shall not apply to the removal by a permittee, of a permanent structure placed by a property owner in a public way, unless such property owner has received prior written permission from the City granting the property owner the right to install a permanent structure on a public way.

24.03.120. Restoration of Public Property.

A. Restoration of the surface of any public way shall be subject to the provisions of Section 16 of the Brigham City Public Works Standards and Technical Specifications.

B. At its option, the permittee doing the actual excavation work may request that the City restore the surface to its original condition. The fee for such resurfacing shall be determined by the Public Works Department in accordance with its reasonable costs for such work and shall be charged to the person, firm, or corporation making the excavation. Payment for said work shall be received by the City prior to the release of the bond.

24.03.130. Insurance Requirements.

A. Before a permit is issued, the applicant shall furnish to the City evidence that such applicant has a comprehensive general liability and property damage policy that includes contractual liability coverage endorsed with the following limits and provisions:

1. A minimum of one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage and not less than one million dollars (\$1,000,000) in the aggregate. The general aggregate limit shall apply separately to the permit, or the general aggregate limit shall be two times the required occurrence limit. The coverage shall be in the nature of Broad from Commercial General Liability coverage. The City Attorney may increase or decrease minimum insurance limits, depending on the potential liability of any project.

2. All policies shall include the City, its employees, officers, officials, agents, volunteers and assigns, as insureds. Any reference to the "City" shall include the City, its employees, officers, officials, agents, volunteers and assigns.

3. The coverage shall be primary insurance as respects the City, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the permittee's insurance and shall not contribute to or with it.

4. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.

5. Coverage shall state that the permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

7. The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.

8. Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested sent to the City.

9. Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers and employees against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit work done by the permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.

10. Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers and employees against any claim or loss, damage or expense sustained by any person occurring by reason of doing any work pursuant to the permit including, but not limited to falling objects or failure to maintain proper barricades and/or lights a required form the time work begins until the work is completed and right-of-way is opened for public use.

B. Insurance is to be placed with insurers with an AM Best rating of no less than an A carrier, with a rating of A7 or higher.

C. The permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the permittee shall be prepared to provide such copies prior to the issuance of the permit.

D. If any of the required policies are, or at any time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this chapter.

E. The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Any deductibles or self-insured retentions shall be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its employees, officers, officials, agents, volunteers or assigns, or the permittee shall procure a bond, in a form acceptable to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

G. A property owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy that demonstrably provides coverage for work in the public way in lieu of the insurance requirements of this section.

H. A provider may be relieved of the obligation of submitting certificates of insurance under the following circumstances:

1. If such company shall submit satisfactory evidence in advance that:

a) It is insured in the amounts set forth in this chapter, or has complied with State requirements to become self insured. Public utilities may submit annually evidence of insurance coverage in lieu of individual submissions for each permit; and

b) Said coverage provides to the City the same scope of coverage that would otherwise be provided by a separate policy as required by this chapter; or

c) The work to be performed under the permit issued to the applicant is to be performed by the City, in which case insurance requirements shall be negotiated between the City and the applicant by separate agreement.

24.03.140. Bond - When Required, Conditions, Warranty.

A. Except as noted in this chapter, each applicant, before being issued a permit, shall provide the City with an acceptable corporate surety bond in the amount to be established by resolution to guarantee faithful performance of the work authorized by a permit granted pursuant to this chapter. The amount of the bond required may be increased or decreased at the discretion of the Public Works Department whenever it appears that the amount and cost of the work to be performed, and not satisfactorily completed, may vary from the amount of bond otherwise required under this chapter. The form of the bond and the entity issuing the bond shall be subject to the approval of the City Attorney.

B. Public utilities franchised by the City shall not be required to file a corporate surety bond if such requirement is expressly waived in the franchise documents.

C. The bond required by this section shall be conditioned as follows:

1. That the permittee shall fully comply with the requirements of the City ordinances and regulations, specifications and standards promulgated by the City relative to work in the public way, and respond to the City in damages for failure to conform therewith;

2. That after work is commenced, the permittee shall proceed with diligence and expedition and shall promptly complete such work and restore the public way to construction specifications, so as not to obstruct the public place or travel thereon more than is reasonably necessary;

3. That the permittee shall guarantee the materials and workmanship pursuant to Section 2.7.A of the Brigham City Public Works Standards and Technical Specifications.

24.03.150. Hold Harmless Agreement; Limitations on City Liability.

A. The permittee agrees to save the City, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under the permit. The issuance and acceptance of any permit under this chapter shall constitute such an agreement by the permittee to this section.

B. This chapter shall neither be construed as imposing upon the City, its officers, employees and agents, any liability or responsibility for damages to any person injured by or by reason of the performance of any work within the public way, or under a permit issued pursuant to this chapter; nor shall the City, its officers, officials, employees, agents, volunteers or assigns thereof be deemed to have assumed any such liability or responsibility by reason of inspection authorized hereunder, the issuance of any permit, or the approval of any work.

24.03.160. Work without Permit - Penalty.

A. A stop order may be issued by the Public Works Department directed to any person or persons doing or causing any work to be done in the public way without a permit.

B. Any person found to be doing work in the public way without having obtained a permit, as provided in this chapter, shall be required to pay a permit fee equal to two times the normal permit fee. For replacement work, where a fee is not normally charged, the normal permit fee for new construction shall apply.

24.03.170. Failure to Comply; Default in Performance.

A. Any permit may be revoked or suspended and a stop order issued by the Public Works Department, after notice to the permittee for:

1. Violation of any condition of the permit, the bond, or of any provision of this chapter;
2. Violation of any provision of any other ordinance of the City or law relating to the work; or
3. Existence of any condition or the doing of any act which does constitute, may constitute, or cause a condition endangering life or property.

B. A suspension or revocation by the Public Works Department, and a stop order, shall take effect immediately upon entry thereof by the Public Works Department and notice to the person performing the work in the public way. Notice to the person performing the work shall be accomplished when the Public Works Department has posted a stop work order at the location of the work. Upon posting of a stop work order, written notice of the stop work order shall be mailed, return receipt requested, to the address indicated by the permittee on the permit.

C. Whenever the Public Works Department finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof may be given to the principal and to the surety on the bond, if there is a surety bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the Public Works Department to be reasonably necessary for the completion of the work.

D. In the event that the surety (or principal), within a reasonable time following the giving of such notice (taking into consideration the exigencies of the situation, the nature of the work, the requirements of public safety and for the protection of persons and property), fails either to commence and cause the required work to be performed with due diligence, or to indemnify the City for the cost of doing the work, as set forth in the notice, the City may perform the work, at the discretion of the Public Works Department, with City forces or contract forces or both, and suit may be commenced by the City Attorney against the contractor and bonding company and such other persons as may be liable, to recover the entire amount due to the City, including attorney fees and a 15% overhead charge, on account thereof. In the event that cash has been deposited, the cost of performing the work may be charged against the amount deposited, and suit brought for the balance due, if any.

24.03.180. Failure to Conform to Design Standards - Penalty.

- A. For failure to conform to the design standards and regulations, the Public Works Department may:
1. Suspend or revoke the permit;

2. Issue a stop order;
3. Order removal and replacement of faulty work;
4. Require an extended warranty period; and/or
5. Negotiate a cash settlement to be applied toward future maintenance costs.

24.03.190. Appeal of Suspension, Revocation, or Stop Order.

Any suspension, revocation or stop order by the Public Works Department may be appealed by the permittee to the Board of Appeals by filing a written notice of appeal within ten days of the action of the Public Works Department. The Board of Appeals shall hear such appeal, if written request therefor be timely filed, as soon as practical, and render its decision within a reasonable time following filing of notice of appeal.

24.03.200. Tampering with Traffic Barricades.

It shall be unlawful for any person to maliciously or wantonly or without authorization and legal cause, extinguish, remove or diminish any light illuminating any barricade or excavation, or to tear down, remove or in any manner alter any rail, fence or barricade protecting any excavation or other construction site.

24.03.210 Conflict with Governing Provisions.

Should there be a conflict between the provisions of this chapter and the provisions of any other ordinance, agreement, franchise, or other document governing the excavation of a public way, the more restrictive provisions of the aforesaid documents shall apply.

24.03.220. Violation - Penalty.

Unless otherwise specified in this chapter, a violation of any provision of this chapter, or failure to comply with an order of suspension, revocation or stop work, by any person, whether a permittee or a subcontractor to a permittee, shall be a Class B misdemeanor. Each day the violation exists shall be a separate offense. No criminal conviction shall excuse the person from otherwise complying with the provisions of this chapter.

Chapter 24.04. Storm Water Drainage Utility Fund.

24.04.010 Purpose.

The Storm Water Drainage Utility Fund is established for the purpose of collecting fees from the residents of Brigham City to establish a fund which will be used for the operation and maintenance of Brigham City's current storm water drainage system as well as the construction of any additional storm water drainage facilities reasonably necessary to control storm water drainage and protect the residents of Brigham City.

24.04.020 Establishment of Fund.

There is hereby established the Storm Water Drainage Utility Fund and Brigham City is hereby authorized to appropriate for said fund fees to be paid by the residents and inhabitants of Brigham City for the purposes set forth above. Said fund may also receive contributions from the General Fund or other funds as may be deemed appropriate by the Brigham City Council.

24.04.030 Rates Charges and Fees.

The Brigham City Council shall, from time to time and by appropriate resolution, fix and determine the rates, charges and fees to be levied and assessed upon the residents and inhabitants of Brigham City. All such rates, charges and fees shall be just, reasonable and nondiscriminatory.

24.04.040 Accounting.

The funds appropriated and revenue raised pursuant to this chapter shall be accounted for as a department within the Public Utility Fund.⁶

⁶ Ordinance No. 97-06, 3/6/97

Chapter 24.05. Storm Drain Utility.⁷

24.05.010. Findings.

The City Council makes the following findings regarding storm water runoff and the City's storm drain System:

- A. Uncontrolled or inadequately controlled storm water runoff causes erosion and property damage.
- B. Uncontrolled or inadequately controlled storm water runoff impedes the regular flow of traffic in the City. Uncontrolled or inadequately controlled storm water runoff hinders the City's ability to provide emergency services to its residents.
- C. Uncontrolled or inadequately controlled storm water runoff poses health hazards to the citizens of the City.
- D. Storm water runoff carries concentrations of oil, grease, nutrients, chemicals, heavy metals, toxic materials and other undesirable materials that may jeopardize the integrity of ground waters and receiving waters, including the City's culinary water supply.
- E. All developed properties in the City contribute to the need for the storm drain system by converting natural ground cover into impervious surfaces.
- F. All developed properties in the City make use of or benefit from the City's operation and maintenance of the storm drain system.
- G. The City's existing storm drain system consists of a network of man-made and natural facilities, structures and conduits, including groundwater and aquifers, that collect and route storm water runoff.
- H. The City's existing storm drain system does not adequately handle the storm water runoff generated in the City.
- I. The City's anticipated growth will place increased demands on the already inadequate storm drain system.
- J. The absence of effective maintenance, operation, regulation and control of the existing storm water drainage conditions in the City, constitute a potential hazard to the health, safety and general welfare of the City, its residents and its businesses.
- K. The EPA and the DEQ are developing additional storm water permitting requirements that will apply to cities of Brigham City's size.
- L. A storm drain utility is the most equitable and efficient method of managing storm water in the City and ensures that each property in the City pays its fair share of the amount that the property contributes to, benefits from and otherwise uses the storm Drain system.

24.05.020. Purpose.

The purpose of this ordinance is to protect the health, safety and welfare of the City and its inhabitants by improving the City's storm drain system, managing and controlling storm water runoff, protecting property, preventing polluted waters from entering the City's water supply and other receiving waters, and establishing a viable and fair method of financing the construction, operation and maintenance of the storm drain system.

24.05.030. Definitions.

The following words and phrases shall be defined as follows:

- A. **Best Management Practices (BMP)** means a wide range of management procedures, schedules of activities, prohibitions on practices and other management practices which have been demonstrated to effectively control the quality and/or quantity of storm water runoff and which are compatible with the planned land use. A list of BMPs and their effectiveness ratings can be found in the Brigham City Storm Water Credit Package which is available at the Brigham City Public Works Department. Another source for treatment BMPs is the California Storm Water Best Management Practices Handbook dated March 1993.
- B. **Catch Basin** is a basin combined with a storm drain inlet to trap solids.
- C. **Debris** shall mean any dirt, rock, sand, tree or other rubbish, litter, etc.
- D. **Detention Basin** means a depression, designed with an inlet and outlet that regulates water flow and allows debris to settle out, that is capable of detaining storm water runoff until it can be released without causing damage downstream.
- E. **Developed Parcel** means any parcel of real property that has been altered from its natural condition by grading, filling, or the construction of improvements or other impervious surfaces.

⁷ Chapter 24.05 and 24.06 added with Ordinance No. 00-22, dated 6/1/00.

F. **Development** means any man-made change to improved or unimproved real property, including, but not limited to site preparation, filling, grading, paving, excavation and construction of buildings or other structures.

G. **Director** means the Public Works Director of Brigham City or his duly authorized representative.

H. **Disturb** means to alter the physical condition, natural terrain or vegetation of real property by clearing, grubbing, grading, excavating, filling, building or other construction activity.

I. **Drain Inlet** shall mean a point of entry into a sump, detention basin or storm drain system.

J. **Equivalent Service Unit (ESU)** is defined as the average amount of impervious surface, expressed in square feet, on developed single family residential parcels. This definition was formerly referred to in the Storm Drainage Master Plan Up-date, May 1997, as an equivalent residential unit (ERU), hereinafter, when the term ERU is used, it shall refer to ESU. One ESU is equal to 3,000 square feet.

K. **Hazardous Material** means any material, including any substance, waste or combination thereof, which because of its quantity, concentration, physical, chemical or infectious characteristics may cause, or significantly contribute to a substantial presence or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

L. **Illicit Connections** means either of the following:

1. Any drain or conveyance whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system, including but not limited to any conveyances which allow any non-storm water discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or

2. Any drain or conveyance connected to the storm drain system which has not been documented in plans, maps or equivalent records and approved by the City.

M. **Illicit Discharge** means any direct or indirect non-storm water discharge to the storm drain system.

N. **Impervious Surface** means any hard surface, other than the natural surface, that prevents or retards the absorption of water into the soil, or that causes water to run off the surface in greater quantities or at a greater rate of flow than the natural surface.

O. **Non-Storm Water Runoff** is defined as any runoff other than storm water.

P. **Parcel** refers to the smallest separately segregated unit or plot of real property having an identified owner, boundaries and surface area which is documented for tax purposes and given a tax account (lot) number by the County Assessor.

Q. **Person** means any individual, corporation, partnership, association, company or body politic, including any agency of the State of Utah and the United States Government.

R. **Pollutant** means anything which causes or contributes to pollution. Pollutants may include, but are not limited to paints, varnishes and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes; yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, articles and accumulations so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including, but not limited to sediments, slurries and concrete resins); and noxious or offensive matter of any kind.

S. **Storm Drain** shall mean a closed conduit for conducting storm water that has been collected by inlets or collected by other means.

T. **Single Family Residential** means a residential building having only one living unit, or a residential building having more than one living unit, if living units are separately owned and titled.

U. **Storm Water** is defined as precipitation such as rain, snow, hail or other natural occurrence.

V. **Storm Water Runoff** is water that is generated by storm water flows over land.

W. **Sump** shall mean a formalized structure underground, surrounded by drain rock, that acts as a detention basin to allow the slow release of water into the surrounding sub-soil. Sumps usually receive storm water runoff from paved areas such as streets, parking lots, building roofs, etc.

24.05.040. Storm Drain Utility.

A. **Creation.** The City Council hereby creates and establishes a Storm Drain utility as part of the City's overall drain system. The Storm Drain Utility shall plan, design, construct, maintain, administer and operate the City's storm drain system.

B. **Enterprise Fund.** The City Council hereby establishes a Storm Drain Utility enterprise fund to handle all income, expenses and other financial transaction related to the Storm Drain Utility. All Storm Drain

Utility service charges shall be deposited in the enterprise fund. Money in the Storm Drain Utility enterprise fund shall not be commingled with or transferred to other City funds. However, the Storm Drain Utility may pay other City funds for services and expenses directly attributable to the Storm Drain Utility. The enterprise fund shall be operated according to State Law and City Policy.

C. **Facilities and Assets.** The Storm Drain Utility shall operate independently of City operations funded by the general fund. The Storm Drain Utility shall have the same relationship to the City as other City utilities, such as the electric, water and waste treatment utilities. Upon creation of the utility, all of the City's storm drain facilities and assets (other than streets and other facilities and assets designated by the City) shall be transferred to the Storm Drain Utility in consideration for the Storm Drain Utility's agreement to take primary responsibility for planning, designing, constructing, maintaining, administering and operating the City's storm drain system.

D. **Administration.** The Storm Drain Utility shall be administered by the City's Public Works Director. The Public Works Director may adopt policies, to assist in the application, administration and interpretation of this ordinance.

24.05.050. Storm Drain Utility Fee.

A. **Imposed.** Each developed parcel of real property in the City shall be charged a storm drain utility fee.

B. **ESU.** The fee shall be based on the number of equivalent service units (ESUs) contained in the parcel. The City Council finds that the ESU is the most accurate measurement for determining the amount that each parcel contributes to, benefits from, and otherwise uses the storm drain utility. Based on a study completed by the City Engineer, the City Council finds and establishes that one ESU equals 3,000 square feet of impervious surface area.

C. **Calculation.** The City Council finds that each single-family residential parcel contributes approximately the same amount of storm water runoff. Therefore, each developed single family residential parcel shall pay a base rate of one (1) ESU. All other developed parcels, including multiple family residential parcels, shall be charged a fee based on the number of ESUs on the parcel. If there is more than one City utility bill for the parcel, the fee shall be divided between the City utility bills covering the parcel. The actual monthly fee (service charge) shall be computed by multiplying the total ESUs for the parcel by the monthly rate.

D. **Charge Per ESU.** The amount charged for each ESU shall be established by resolution of the City Council.

E. **Exemptions and Credits.** The Storm Drain Credit Review Committee may establish exemptions and credits to the storm drain utility fee.

F. **Policies.** The Public Works Director may adopt policies, consistent with this ordinance and any resolutions passed by the City Council, to assist in the application, administration and interpretation of this ordinance.

G. **Appeals.** Any person or entity that believes that this ordinance, or any storm drain utility rate resolution, was interpreted or applied erroneously may appeal to the Public Works Director ("Director"). The appeal shall be in writing, shall state any facts supporting the appeal, and shall be made within ten (10) days of the decision, action, or bill being appealed. The Director may elect to hold a hearing on the appeal. The Director shall decide the appeal within ten (10) days of when the appeal is filed. If the person or entity is not satisfied with the Director's decision, a further appeal may be made to the City Council (or his or her designee). The appeal to the City Council shall follow the same procedure as the appeal to the Director. The City Council's decision shall be final and binding on all parties.

24.05.060. Billing.

A. The City Council finds that the City's storm drain system, waste treatment system, culinary water system, and solid waste collection system are interrelated services that are part of a unified City plan to provide for the health, safety and welfare of the City and its residents in an environmentally responsible manner. Therefore, the Storm Drain Utility fee shall be included on the City's regular monthly utility bill for any given property. If there is no regular utility bill for the property, the Storm Drain Utility fee shall be charged to the owner of the property. The fee shall be deemed a civil debt owed to the City by the person or entity paying for the City utility services provided to the property. All properties shall be charged the fee, regardless of whether or not the owner or occupant of the property requests the Storm Drain Utility services. Failure to pay any portion of the utility bill may result in termination of other utility services. The Storm Drain Utility fee shall, from time to time, be set by resolution.

B. Non-single family residential parcels will be assessed a fee based on the actual amount of impervious surface on the parcel. Single family residential parcels will all be assessed a common fee, based on the average amount of impervious surface area found on single family residential parcels in the City. The City Council finds that the common fee for single family residential parcels is justified because of the following:

1. Each single family residential parcel contributes approximately the same amount of storm water runoff, and;

2. It would be impractical and difficult to administer the utility if each single family residential parcel were measured individually.

C. The City Council finds ESUs to be of the most accurate measurement for determining the amount that each parcel contributes to, benefits from and otherwise uses the Storm Drain Utility. The City Council establishes the amount of impervious surface included in each ESU to be equal to the average amount of impervious surface found on single family residential parcels. Therefore, each single family residential parcel will pay the fee for one ESU.

Chapter 24.06. Storm Drainage.⁸

24.06.010. Obstruction.

A. It is unlawful for any person to obstruct or contribute to the obstruction of the flow of storm water runoff or non-storm water runoff into any sump, retention basin, storm drain, curb and gutter, drain inlet, or other associated structural controls that convey storm water and/or non-storm water runoff.

B. It is unlawful for any person to cause any obstruction that inhibits the normal flow of storm water and/or non-storm water runoff in any curb and gutter, unless the obstruction is associated with a street and/or storm drainage improvement project and is authorized by the City Engineer or his appointee and granted with the issuance of a permit signed by the City Engineer or his appointee.

C. It is unlawful for an person to cover any drain inlet for any reason or purpose.

D. Paragraphs 1 & 2 of this section shall not apply during clean-up periods established by the City, provided the materials are placed according to any directions from the City and do not obstruct drain inlets.

24.06.020. Prohibition of Dumping and Littering.

A. It is unlawful for any person to dump, or allow to be dumped into any sump, detention basin, storm drain, curb and gutter, drain inlet, or other storm drainage structure that conveys storm water and/or non-storm water, any type of debris, petroleum product, chemical, paint, pesticide, herbicide, heavy metal, acid or base product, solid or liquid waste product, hazardous waste product, green waste and/or human or animal waste.

B. It is unlawful for any person to throw, deposit, leave, maintain or keep any; refuse, rubbish, garbage, discarded or abandoned objects, articles or other materials containing pollutants or hazardous materials on public or private lands which may result in the discharge of a pollutant and/or hazardous material.

24.06.030. Damaging Storm Drain Lines or Irrigation Lines Prohibited.

Any person who damages, breaks, defaces, or uncovers any portion of a storm drain line or irrigation line shall be responsible for the repair and/or replacement of any damaged portion of that line and any connecting lines. Repairs shall be made as per the specifications in the Brigham City Standards and Technical Specifications book. It is unlawful to remove any part or portion of the storm drain lines, irrigation lines or any lines connecting to the storm drain or irrigation systems without approval from the Director.

24.06.040. Manhole Covers.

No person shall open any storm drain manhole or other storm drain enclosure without permission from the Director.

24.06.050. Drinking Water Protection.

To provide for the public health, safety and welfare of citizens, compliance with the current Drinking Water Source Protection Plan is required.

⁸ Chapter 24.05 and 24.06 added with Ordinance No. 00-22, dated 6/1/00.

24.06.060. Prohibition of Illicit Connections.

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

24.06.070. Requirements for Approval of Hookups.

Connections are allowed for storm water runoff provided they comply with subsection 24.06.090 and discharge is limited to 0.2 c.f.s. per acre and connections are documented on as-built plans provided to the City as required by Brigham City. Appropriate charges for such hookups shall be established by resolution adopted by the City Council.

24.06.080. Exempt Discharges.

The following discharges are exempt from discharge prohibitions established by this Article:

A. Discharges regulated under a valid National Pollutant Discharge Elimination System (NPDES) storm discharge permit from the State of Utah Department of Environmental Quality Division of Water Quality, provided compliance with all permit conditions are maintained.

B. Discharges from: water line flushing by the City, sprinkled landscape irrigation or sprinkled lawn watering, non-commercial washing of vehicles with biodegradable detergent, natural riparian habitat or wet-land flows, natural groundwater flows, and fire fighting activities.

Exemptions set forth by City Resolution 98-20 include the following:

A. **Undeveloped Parcels.** Undeveloped parcels shall not pay any storm water drainage utility fees.

B. **Streets.** The City Council finds that all streets (publicly and privately owned) are part of the storm utility conveyance system and are therefore exempt from the storm drain fee. For the purpose of this section, "streets" shall include the following:

1. Any publicly owned rights-of-way.
2. Any property that has been dedicated, deeded or condemned as a street and accepted by the City as a street.
3. Any property that has been abandoned to the public as a street, if the City considers the property a street and maintains it as such.
4. Any thoroughfares (publicly or privately owned) that are open to the public, provide access to real property and are used primarily for vehicular traffic.
5. Any railroad rights-of-way.

C. **Common Area.** Common areas in residential condominium and P.U.D. developments shall not be assessed a storm drain utility fee if each of the residential units in the development is assessed the standard residential fee.

24.06.090. Authorization to Adopt and Impose Best Management Practices.

The City requires Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system or waters of the United States. Each development is required to include an oil/water separator or other equally effective treatment BMP to treat storm drainage before it enters any City owned storm drain.

24.06.100. Easements.

The Director shall be permitted to enter all private properties through which the City holds an easement for the purposes of inspection, observation, measurement, sampling, repair, maintenance, or any portion of the storm drain facilities lying within the easement, or the performance of any other duties pertinent to the operation of the storm drain. All entry and subsequent work, if any, on an easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved.

24.06.110. Authority to Inspect.

Whenever necessary to make an inspection to enforce any provision of this Article, or whenever the City has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article, the City may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the owner or occupant

refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

24.06.120. Requirement to Monitor and Analyze.

The City requires that any person engaged in any activity and/or owning or operating any facility which is suspected of causing or contributing to storm water pollution, illegal discharges and/or non-storm water discharges to the storm drain system or waters of the United States, to undertake at said person's expense such monitoring and analyses and furnish such reports to the City as deemed necessary to determine compliance with this Article.

24.06.130. Notice of Violation.

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Article, the City will order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- A. The performance of monitoring, analyses and reporting;
- B. The elimination of illicit connections or discharges;
- C. That violating discharges, practices or operations shall cease and desist;
- D. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property, and;
- E. Payment to cover administrative, remediation, monitoring, analyses and reporting costs; and;
- F. The implementation of source control or treatment BMPs.
- G. A time requirement for compliance.

24.06.140. Violation and Penalty

A. The violation of any of the provision of this Article shall be a Class C misdemeanor, punishable by a fine not to exceed seven hundred fifty dollars (\$750) or a jail term of up to ninety days, or by both such fine and imprisonment. Each day that a violation occurs shall constitute a separate offense.

B. If, as the result of the violation of any provision of this Chapter, the City or any other party suffers damages and is required to make repairs and/or replace materials, the cost of repair or replacement shall be borne by the party in violation, in addition to any criminal fines and/or penalties.

C. Violators of this Article are also subject to any penalties that may be imposed by the State of Utah, under the authority of the Utah Water Quality Act, Title 19, Chapter 5, of the Utah Code.

24.06.150. Compliance with Federal and State Laws.

Nothing contained in this Article is intended to relieve any person or entity from any obligation to comply with applicable Federal and State Laws and Regulations pertaining to clean water and/or storm water runoff.